

notes to representing a victim in the fight for Reduced Earnings Allowance (REA)

Mr agreed that he had been suffering from (bronchitis/emphysema/COAD) before the presence of asbestosis was established. But we suggest that there is an accepted medical view that (bronchitis/emphysema/COAD) can be the result of asbestosis

Mr has been diagnosed suffering the prescribed industrial disease asbestosis, he is aged and has been assessed ...% disabled from his loss of faculty, specified as loss of lung function. His other conditions are

On page 11 of the Schedule of Evidence Dr gives his prognosis of last (or whatever) year, and appears to suggest that his physical impairment is not an effect of his diagnosed condition, but is rather to be associated with his other physical ailments. This is a surprising observation. He refers to Mr’s asbestosis but does not ‘see’ his chronic breathlessness, his severe loss of lung function, as bringing about his disability! It is rather as though asbestosis was being viewed as a *minor* part of Mr’s overall physical condition. In fact when a victim is diagnosed asbestosis this is a very severe illness, there is no such thing as ‘minor’ asbestosis, there is only asbestosis.

Mr knows what this disease is and I have no hesitation in speaking right in front of him - far too many of his friends and ex-colleagues are now dead as a direct effect of asbestos exposure and he is well aware of the fact. Many many more than 50% of those who work in his trade (insulation) die of asbestos-related disease. There was very little information on the subject available when Mr was employed in it. We now know that with the onset of the disease the numbers of implanted asbestos fibres or scars from rejected fibres have increased with repeated exposure; the tissues in different parts of the lung begin to lose their flexibility and contract. This is what fibrosis is. As the process continues the lungs lose the ability to breathe. Many victims can take up to five years to die a slow and degenerative death; others struggle on, becoming increasingly disabled, until some other illness causes their death. That’s the situation which people like Mr have to face up to and it doesn’t particularly help matters when the disease is

described in such a way that the actual effects of the condition are somehow ignored or regarded as of 'minor' importance to his overall physical condition, a condition that is already assessed at ...% disabled. Having been diagnosed suffering from asbestosis he is here obliged to somehow prove that progressive disability is an integral part of his condition. Yet this is a medically attested fact. Asbestosis doesn't stop its relentless progress when the person is removed from exposure. Mr has already been assessed ...% disabled on his loss of faculty. And this was years ago. In order to be diagnosed suffering from this particular prescribed industrial disease a patient must have provided clear and undisputed evidence to the adjudicating medical authority, as listed in the DSS pamphlet NI 226.

[1. a thorough history of substantial exposure to asbestos. 2. persistent bilateral basal crackles 3. radiological features of diffuse interstitial fibrosis in the lower halves of the lung fields; 4. impairment of the lung function consistent with these features.]

Other factors should be mentioned here. The most recent figures on pneumoconiosis claims (1988) show that only 12% of all claims in the West of Scotland are successful. Yet the incidence of asbestos-related disease in this area is close to 8 times higher than the national average. It is accepted that diagnosis is not straightforward and the statistics mentioned give clear proof of the difficulty. But one especial difficulty for victims of asbestosis is also implicit in the statistics; when a claimant is finally diagnosed by the adjudicating medical authority, on a balance of probability it seems evident that he has been suffering from the disease for an undetermined period.

No one can say with certainty when the disease begins. DSS guidelines require radiological evidence of interstitial fibrosis but lung function changes precede radiological and clinical evidence and it isn't uncommon to hear crackles even when the X-ray is clear. Patients typically present with chest pains and chronic breathlessness long before their illness is finally diagnosed; they are already disabled: they are unable to walk distances, unable to do any physical exertion; unable to sleep without sitting up, unable to sleep for periods of more than 2 to 3 hours. Mr has a history of chronic bronchitis (? but probably) which wasn't helped by the fact that he used to be a smoker, but it is equally true that bronchitis

used to be one of the typical misdiagnoses made on asbestos-victims through a lack of knowledge on the subject. It is also the case that smoking has absolutely nothing to with asbestosis, although Dr seems under the impression that Mr 's former smoking habits would have more affect on his health than the asbestosis; at the very least that's a matter of opinion; on the balance of probability it is highly unlikely (i.e. he is *already* fucking diagnosed asbestosis!).

Mr has other physical disablements/illnesses (heart disease? arthritis?) but we know that asbestos attacks every part of the body and there is an obvious relationship between respiratory disease and the heart etc. Of the total asbestos-induced cancers, 50% are in the lungs, 10% are of the lining of the lungs and intestines, and 10% in other sites - particularly throat, intestines and stomach.

Mr cannot walk any distance without severe discomfort; he is unable to perform any physical chore that demands exertion, his domestic life is severely restricted (he can no longer fulfil his marital status, sex has more less gone from his marriage because of this). He tried to keep working at his regular occupation of (insulation engineer/joiner/painter) for as long as he possibly could but was then forced to stop work on medical advice and advised to look for a light job. But nowadays for a man of his years and experience there are no 'light' jobs. In view of his heart and lung condition the sort of exertion required to walk could easily constitute a danger to his life, or if not would be likely to lead to a serious deterioration in his health.

Mr has been diagnosed suffering from the prescribed industrial disease asbestosis. A direct effect of this progressive, degenerative disease is the inability to walk or do any physical exercise that causes exertion. On a balance of probability this is why he is now disabled and therefore unfit to work at his regular occupation, there is surely no question about this.